

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Scott Williams

Serial No.: 10/730,378

Filed: DECEMBER 8, 2003

For: PLANTS AND SEEDS OF CORN
VARIETY LH332

Group Art Unit: 1638

Examiner: Bui, Phuong

Atty. Dkt. No.: HFSC:017US

**CERTIFICATE OF ELECTRONIC TRANSMISSION
37 C.F.R. § 1.8**

I hereby certify that this correspondence is being
electronically filed with the United States Patent and
Trademark Office via EFS-Web on the date below:

July 25, 2007

Date

/Robert E. Hanson/

Robert E. Hanson

REQUEST FOR REFUND TO DEPOSIT ACCOUNT

Mail Stop 16 – Refund Branch

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Commissioner:

Applicant hereby submits this Request for Refund of the Notice of Appeal fee in the amount of \$500 filed on May 8, 2006. This Request is timely submitted pursuant to 37 C.F.R. §1.26(a) as it has been filed within two years from the date the fees for which the refund is requested were paid.

The refund is requested on the basis that Applicant's Appeal was rendered moot and not heard due to the Examiner's withdrawal of substantially all of the appealed rejections. Specifically, a final Office Action was issued by the Examiner on February 9, 2006 rejecting claims 1-24. In the final Office Action, claims 1-24 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite; claims 3, 18 and 23-24 were rejected under 35 U.S.C. §112, first

paragraph, as failing to comply with the written description requirement; claims 1-24 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement; and claims 23-24 were rejected under 35 U.S.C. §102 as being anticipated, or in the alternative under 35 U.S.C. §103 as being obvious.

In response to the final Office Action, Applicant submitted a Notice of Appeal and the aforementioned fee. After the submission of the Notice of Appeal and a teleconference with Applicants, the Examiner withdrew substantially all of the rejections to the claims. Specifically, the Examiner mailed a Notice of Allowance on September 1, 2006 allowing claims 1-22, 25 and 26, with only minor Examiner Amendments to claims 11, 16, 19, and 21, cancellation of claims 23-24, and addition of claims 25-26 with subject matter similar to that of previous claims 23-24. Therefore, substantially all of the rejections were withdrawn without hearing the Appeal.

It was because of the Examiner's initial unwillingness to allow the case and subsequent reversal of this position that Applicant's Notice of Appeal was necessary and the appeal was never heard.

Accordingly, the Commissioner is hereby requested to refund the Notice of Appeal and Appeal Brief fees pursuant to 37 C.F.R. § 1.26 by crediting Fulbright & Jaworski L.L.P. Account No. 50-1212/ HFSC:017US in the amount of \$500.00.

Respectfully submitted,

/Robert E. Hanson/

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Date: July 25, 2007